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**TITLE 326 AIR POLLUTION CONTROL DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #16-209

**CROSS-STATE AIR POLLUTION RULE AND CLEAN AIR INTERSTATE RULE REPEAL****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 24](#) and [326 IAC 26-1-5](#) concerning the federal Cross-State Air Pollution Rule (CSAPR) published by the United States Environmental Protection Agency (U.S. EPA) on August 8, 2011 (76 FR 48208), and the proposed CSAPR Update Rule for the 2008 ozone National Ambient Air Quality Standards published on December 3, 2015 (80 FR 75706). This rulemaking will also repeal the Clean Air Interstate Rule at [326 IAC 24-1](#), [326 IAC 24-2](#), and [326 IAC 24-3](#). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 24-1](#); [326 IAC 24-2](#); [326 IAC 24-3](#); [326 IAC 26-1-5](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The Clean Air Act contains requirements concerning the transport of air pollution across state boundaries. Often referred to as good neighbor provisions, states are required to reduce emissions that cross state lines and affect neighboring states. U.S. EPA finalized a rule on August 8, 2011 (76 FR 48208) that requires states to reduce air pollution and attain clean air standards by reducing power plant emissions that contribute to ozone or fine particle (PM<sub>2.5</sub>) pollution in other states, otherwise known as the Cross-State Air Pollution Rule (CSAPR). CSAPR replaces U.S. EPA's 2005 Clean Air Interstate Rule (CAIR) in response to the December 2008 court decision directing U.S. EPA to issue a new rule to implement Clean Air Act requirements. The requirements of CAIR were kept in place temporarily until a new rule could be issued. However, CSAPR was challenged by several states, local governments, industry groups, and labor groups. The timing of the CSAPR implementation has been affected by a number of court actions. On December 30, 2011, CSAPR was stayed prior to implementation. On April 29, 2014, the U.S. Supreme Court issued an opinion reversing an August 21, 2012, D.C. Circuit decision that had vacated CSAPR. Following the remand of the case to the D.C. Circuit, U.S. EPA requested that the court lift the CSAPR stay and toll the CSAPR compliance deadlines for three years. On October 23, 2014, the D.C. Circuit granted the request.

CSAPR requires 28 states in the eastern half of the United States, including Indiana, to significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and PM<sub>2.5</sub> pollution in other states. CSAPR includes a process for determining each upwind state's responsibility to protect downwind air quality. Each time the National Ambient Air Quality Standards (NAAQS) are changed, U.S. EPA will apply this process and determine if interstate pollution transport contributes to exceedances of the new standard and whether new emission reductions should be required from upwind states. CSAPR defines what portion of an upwind state's emissions "significantly contribute" to ozone or PM<sub>2.5</sub> pollution in nonattainment or maintenance areas in downwind states. This definition considers the magnitude of a state's contribution, the air quality benefits of reductions, and the cost of controlling pollution from various sources. Once these obligations are determined, CSAPR requires states to eliminate the portion of their emissions defined as their "significant contribution" by setting a pollution limit, or budget, for each covered state.

CSAPR allows air quality-assured allowance trading among covered sources, utilizing an allowance market infrastructure based on existing, successful allowance trading programs. CSAPR allows sources to trade emission allowances with other sources within the same program in the same or different states, while firmly constraining any emissions shifting that may occur by requiring a strict emission ceiling, or state assurance level, in each state, which will be the budget plus a variability limit. It includes assurance provisions that ensure each state will make the emission reductions necessary to meet the "good neighbor" provision of the Clean Air Act.

CSAPR requires significant reductions in sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions that react in the atmosphere to form PM<sub>2.5</sub> and ground-level ozone and are transported long distances. The first phase of compliance was scheduled to begin January 1, 2012, for annual SO<sub>2</sub> and NO<sub>x</sub> reductions and May 1, 2012, for ozone season NO<sub>x</sub> reductions. The second phase of SO<sub>2</sub> reductions was scheduled to begin January 1, 2014. Indiana is designated as a Group 1 state in CSAPR with additional SO<sub>2</sub> reductions required during the second phase. U.S. EPA has estimated that CSAPR, other U.S. EPA actions, and state actions would reduce power plant SO<sub>2</sub> emissions by 73% and NO<sub>x</sub> emissions by 54% from 2005 levels.

The reinstated CSAPR took effect on January 1, 2015, for annual SO<sub>2</sub> and NO<sub>x</sub>, and May 1, 2015, for ozone

season NO<sub>x</sub>, with Phase II to begin in 2017. U.S. EPA published the CSAPR Interim Final Rule in the Federal Register on December 3, 2014 (79 FR 71663) to align dates in the CSAPR rule text with the revised court-ordered schedule. The interim rule tolled the dates in CSAPR for three years. Therefore, the implementation dates were changed from 2012 to 2015 for Phase I and 2015 to 2017 for Phase II. On February 26, 2016, a ministerial action was issued by U.S. EPA to finalize these changes to CSAPR.

U.S. EPA proposed an update to CSAPR on December 3, 2015 (80 FR 75710) to address transport for the 2008 ozone NAAQS by issuing the proposed CSAPR Update Rule. This rule is expected to be finalized in the summer of 2016. U.S. EPA is proposing to address transport for the 2008 ozone NAAQS by lowering the budgets in CSAPR for the NO<sub>x</sub> ozone season. According to the CSAPR Update Rule, this proposal will reduce summertime NO<sub>x</sub> emissions from power plants in 23 states in the eastern U.S. by 85,000 tons in 2017 compared to projections without the rule. Due to this proposed rule and other changes already underway in the power sector, ozone season NO<sub>x</sub> emissions will be 150,000 tons lower in 2017 than in 2014, a reduction of more than 30%.

Indiana's budgets in CSAPR and the CSAPR Update Rule are as follows:

Indiana Budgets in CSAPR and CSAPR Update Rule (in tons)						
Transport Rule Trading Program	2015/2016	2015/2016 Variability	2015/2016 State Assurance Level	2017 and Thereafter	2017 and Thereafter Variability	2017 and Thereafter State Assurance Level
SO <sub>2</sub> (Under CSAPR)	285,424	51,376	336,800	161,111	29,000	190,111
NO <sub>x</sub> Annual (Under CSAPR)	109,726	19,751	129,477	108,424	19,516	127,940
NO <sub>x</sub> Ozone Season (Under CSAPR)	46,876	9,844	56,720	46,175	9,697	55,872
NO <sub>x</sub> Ozone Season (Under CSAPR Update Rule)				28,284	5,940	34,224

IDEM proposes adoption of the three trading programs under CSAPR (Transport Rule Annual NO<sub>x</sub> Trading Program, Transport Rule Ozone Season NO<sub>x</sub> Trading Program, and Transport Rule Group 1 SO<sub>2</sub> Trading Program) into new state rules at [326 IAC 24-5](#), [326 IAC 24-6](#), and [326 IAC 24-7](#).

To speed implementation, U.S. EPA adopted Federal Implementation Plans (FIP) for each of the states covered by CSAPR. FIPs will also be put in place for any state without a State Implementation Plan (SIP) at the time the CSAPR update rule is finalized. U.S. EPA is encouraging states to submit SIPs starting as early as 2016. IDEM is proposing to develop a state rule and submit it to U.S. EPA for full SIP approval. If IDEM can submit a SIP to U.S. EPA by December 1, 2017, the deadline identified by U.S. EPA, there should be sufficient time for U.S. EPA to approve the CSAPR SIP and Indiana will be able to allocate state allowances starting with the 2021 control period.

IDEM has initiated a separate rulemaking to address the non-EGUs that were part of a prior good neighbor rule, the NO<sub>x</sub> SIP Call, and CAIR. This separate rulemaking also proposed to repeal the CAIR rules at [326 IAC 24-1](#), [326 IAC 24-2](#) and [326 IAC 24-3](#) and replace a reference to CAIR in the Regional Haze rule at [326 IAC 26](#). Currently CAIR participation by electric generating units satisfies the SO<sub>2</sub> and NO<sub>x</sub> requirements of the Regional Haze rule. IDEM is proposing to repeal CAIR and replace the reference to CAIR in the Regional Haze rule with a reference to CSAPR within this rulemaking instead and once IDEM proceeds to the second notice of public comment period for LSA Document #15-414, IDEM will revise that notice to indicate that the repeal of CAIR rules will be addressed in this rulemaking.

States have the option of following the federal rule for awarding allowances or developing a new methodology. The FIP provides for the use of historic heat input (no fuel factors) with a restriction that no unit's allocations can exceed that unit's historic emissions. For 2015 and 2016 allocations, U.S. EPA used a historic heat input based on a 5-year baseline (2006-2010) to approximate a unit's normal operating conditions over time. An average of the three highest, non-zero annual heat input values is used as the historic heat input for each unit. The historic emissions baseline is established using the maximum value for eight years of data (2003-2010) for SO<sub>2</sub>, NO<sub>x</sub>, and ozone season NO<sub>x</sub>. New unit allocations (3% new unit set-aside) are allocated in two rounds with the first round being based on the previous year's emissions, if available, and a second round based on the emissions generated during the first year of operation. By pursuing a rulemaking, IDEM has the opportunity to update the baseline and maintain the historic infrastructure of the SIP. IDEM invites comments and suggestions on the adoption of CSAPR into the IAC. At this time IDEM has not made any decisions on allowance allocation methods or options to consider within CSAPR and will evaluate comments received from interested parties before moving forward. IDEM is interested in adopting a rule that does not increase the complexity of CSAPR while

addressing issues relevant to Indiana sources.

Further, IDEM will also review the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. The rule will also be reviewed to ensure compliance with rule drafting guidelines, and for opportunities to streamline, simplify, and clarify the language. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

#### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Adopt CSAPR and the CSAPR update with allowance allocation methodology similar to the methods used by U.S. EPA for allocation years 2015 and 2016, repeal existing CAIR rules, and replace the reference to CAIR in the Regional Haze rule with a reference to CSAPR. Review the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. Streamline, simplify, and clarify the language and ensure the rule is in compliance with rule drafting guidelines.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Adopt CSAPR and the CSAPR update but select an allowance allocation methodology different from what has been provided by U.S. EPA, repeal existing CAIR rules, and replace the reference to CAIR in the Regional Haze rule with a reference to CSAPR. Review the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. Streamline, simplify, and clarify the language and ensure the rule is in compliance with rule drafting guidelines.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Not do a rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, by not doing a rulemaking Indiana's rules will not comport with federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

40 CFR Part 52, Approval and Promulgation of Implementation Plans.

40 CFR Part 72, Permits Regulation.

40 CFR Part 78, Appeal Procedures.

40 CFR Part 97, Federal NO<sub>x</sub> Budget Trading Program and CAIR NO<sub>x</sub> and SO<sub>2</sub> Trading Programs for State Implementation Plans.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative will not have a fiscal impact beyond what regulated entities would be subject to under current federal law. U.S. EPA estimated in the 2011 CSAPR fiscal impact analysis that the projected annual costs would be \$800 million for the affected CSAPR states, along with the roughly \$1.6 billion per year in capital investments already under way as a result of CAIR. Since the CSAPR update rule has not been finalized, estimates for the costs associated with that portion of the program have not been published by U.S. EPA. Reviewing the rule for opportunities to fix typographical errors, inconsistencies, and organizational issues, to streamline and simplify the language, including incorporating reference material, and ensure the rule is in compliance with the Indiana Legislative Services Agency's Administrative Rules Drafting Manual may result in a nominal cost savings. Clear and updated rules should enhance the ability of sources to comply with requirements.

Potential Fiscal Impact of Alternative 2. This alternative will not have a fiscal impact beyond what regulated entities would be subject to under current federal law. However, if IDEM selects an allowance allocation methodology different from what has been provided by U.S. EPA, this may result in some cost impact changes to individual sources, but should not result in increased costs to control for any individual sources compared to the FIP. Reviewing the rule for opportunities to fix typographical errors, inconsistencies, and organizational issues, to streamline and simplify the language, including incorporating reference material, and ensure the rule is in compliance with the Indiana Legislative Services Agency's Administrative Rules Drafting Manual may result in a nominal cost savings. Clear and updated rules should enhance the ability of the sources to comply with requirements.

Potential Fiscal Impact of Alternative 3. This alternative will not have a fiscal impact beyond what regulated entities would be subject to under current law. If this rule is not adopted by the Indiana Environmental Rules Board then U.S. EPA would retain the FIP that is already in place for Indiana sources. However, Indiana will lose

the opportunity to select an allowance allocation methodology different from what has been provided by U.S. EPA and maintain the historic infrastructure of the SIP.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel  
IDEM Small Business Regulatory Coordinator  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-6562 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Robert Warner  
Office of Small Business and Entrepreneurship  
One North Capitol, Suite 600  
Indianapolis, IN 46204  
(317) 232-5679  
[ombudsman@osbe.in.gov](mailto:ombudsman@osbe.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell  
IDEM Small Business Assistance Program Ombudsman  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8587 or (800) 451-6027  
[snhowell@idem.in.gov](mailto:snhowell@idem.in.gov)

### **Public Participation and Work Group Information**

IDEM will schedule a roundtable discussion for IDEM to present an overview of the rule and opportunity for discussion between interested parties and IDEM. The meeting can be used to decide if a work group is needed for this rulemaking. IDEM will provide the date and location of the meeting once that information is available. If you wish to be added to an e-mail distribution list for this rulemaking, please contact Lauren Aguilar, Office of Legal Counsel, Rules Development Branch at (317) 234-8559 or (800) 451-6027 (in Indiana) or [laguilar@idem.in.gov](mailto:laguilar@idem.in.gov). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-209 CSAPR and CAIR Repeal  
Lauren Aguilar  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules

Development Branch at (317) 232-8922.

(3) By electronic mail to [laguilar@idem.in.gov](mailto:laguilar@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than July 1, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel (317) 234-8559 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch  
Office of Legal Counsel

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An [html](#) version of this document.